

REMARKS

I. General

Claims 1-83 are pending in the current application. Claims 1-83 are rejected. The issues raised in the Office Action mailed May 13, 2004 are:

- Claims 1-83 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,592,530 to Brockman et al. (hereinafter *Brockman*) in view of either U.S. Patent No. 6,389,112 to Stewart et al. (hereinafter *Stewart*) or U.S. Patent No. 6,078,647 to D'Eletto (hereinafter *D'Eletto*).

II. Failure to Clearly Communicate Findings for Rejection

Applicants would like to point out that although the Examiner has indicated that claims 1-83 are rejected in the Office Action, the claims are not clearly and specifically addressed. The mere paraphrasing of the claims and generally asserting that the applied art teaches the pending claims is not consistent with office policy. Accordingly, Applicants respectfully point out that whenever, on examination, any claim for a patent is rejected, the Examiner must provide notification of the reasons for rejection together with such information and references as may be useful in judging the propriety of continuing the prosecution. 35 U.S.C. § 132. The Examiner is also required to ***clearly communicate*** findings, conclusions, and reasons which support all proposed rejections. MPEP 2106 (VII). Moreover, in rejecting the dependent claims, the Examiner merely asserts that the combination of the applied art teaches and renders obvious the claimed subject matter. Applicants therefore request that the Examiner specifically set forth grounds for rejection with respect to the dependent claims 2-24, 26-41, 43-56, 58-69, and 71-83 in order that Applicants may have a full and fair opportunity to explore the patentability of these claims.

As such, the Examiner has not specifically articulated the rejections of claims 1-83 and has failed to clearly communicate findings for rejections early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise respond completely at the earliest opportunity. M.P.E.P. §706. Thus, in accordance with the requirements under MPEP §§706 and 2106 (VII), Applicants respectfully request that if the Examiner maintains the current rejections, that he identify the specific portions of the applied art which meets each claim element so that that Applicants may have a full and fair opportunity to explore the patentability of these claims.

III. Rejection under 35 U.S.C. § 103 (a) *Brockman & Stewart* or *D'Eletto*

Claims 1-83 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brockman* in view of either *Stewart* or *D'Eletto*. Applicants respectfully traverse this rejection and asserts that the rejected claims are allowable at least for the reasons stated below.

To establish a prima facie case of obviousness under 35 U.S.C. § 103(a), the prior art cited must teach or suggest all the claim limitations. MPEP § 2143. Applicants respectfully assert that the cited references do not teach or suggest all the claim limitations of claims 1-83, and therefore, the claims are not obvious under 35 U.S.C. § 103(a).

A. Failure to teach all claim limitations**1. Independent Claims****Claim 1**

Claim 1 requires, in part:

from the captured signaling data, generating performance data about interconnection services provided in a communication network.

Claim 25

Claim 25 requires, in part:

gathering data about performance of interconnection services provided in a communication network by capturing signaling data for said interconnection services on a signaling network;

Claim 70

Claim 70 requires, in part:

capturing signaling data on a signaling network for said interconnection services of said at least one interconnecting carrier; and

The cited references fail to disclose at least these features of claims 1, 25, and 70. In rejecting claims 1, 25, and 70 the Examiner states that *Brockman* discloses these features of claims 1, 25, and 70 by merely paraphrasing the claim language. (Office Action, pages 2-3). In making this rejection, the Examiner makes reference to column 16, however, the Examiner fails to specifically address which portion of column 16 is relied upon as disclosing these

features of claims 1, 25, and 70. Thus, Applicants assume that the Examiner relied on the portions discussed below.

Brockman discloses state machines that detect errors, and if no errors are detected by a state machine, the ISUP data that is collected by *Brockman* is usually discarded. (*Brockman*, col. 16, lns 1-4). *Brockman* further discloses that data that is kept is used for performance monitoring, a call tracing mechanism, and for Call Detail Record (CDR) generation. (*Brockman*, col. 16, lns 4-11). The performance monitoring of *Brockman* tracks all of the ISUP calls in order to check for errors in the network whereby the state machines will accumulate this data. (*Brockman*, col. 16, lns 6-9). The state machine will detect errors in its call record and then signal another monitor to send corresponding data in a secondary call record. (*Brockman*, col. 16, lns 18-22). If an error condition is detected, all data for a particular call is saved for later analysis. (*Brockman*, col. 16, lns 15-19). However, the disclosure of a performance monitoring application that monitors ISUP calls to check for errors and saves all data for a particular call if an error is detected fails to teach or suggest: generating performance data, from captured signaling data, about interconnection services provided in a communication network; gathering data about performance of interconnection services provided in a communication network by capturing signaling data for said interconnection services on a signaling network; nor capturing signaling data on a signaling network for said interconnection services of said at least one interconnecting carrier.

Furthermore, neither *Stewart* nor *D'Eletto* cures this deficiency, as the Examiner clearly asserts these references as disclosing the monitoring of call status, such as call connection rate, failure rate, total attempts, call count, busy attempt, and call detail analysis. (Office Action, page 3). Thus, neither *Brockman*, *Stewart*, *D'Eletto*, nor any combination thereof discloses all the elements of claims 1, 25, and 70, and therefore, Applicants respectfully request that the rejection of claims 1, 25, and 70 under 35 U.S.C. § 103 be withdrawn.

Claim 42

Claim 42 requires, in part:

An interconnection analysis server comprising:

memory storing computer executable code, said code executable to receive performance data for interconnection services provided on a communication network.

The cited references fail to disclose at least this feature of claim 42. In rejecting claim 42, the Examiner asserts that the cited references disclose the above features of claim 42 by stating, “see the explanation as set forth regarding claim 1, because call detail record analysis would be performed by an interconnection analysis server.” (Office Action, page 3). However, the rejection of claim 1 merely makes reference to column 16 of *Brockman* without specifically pointing to any features of *Brockman* as disclosing the elements of claim 1. Thus, Applicants assume that the Examiner relied on the portions of *Brockman* discussed in column 16 as disclosing this element of claim 42.

As discussed above, *Brockman* discloses performance monitoring that tracks all of the ISUP calls in order to check for errors in the network whereby the state machines will accumulate this data. (*Brockman*, col. 16, lns 6-9). The state machine will detect errors in its call record and then signal another monitor to send corresponding data in a secondary call record. (*Brockman*, col. 16, lns 18-22). If an error condition is detected, all data for a particular call is saved for later analysis. (*Brockman*, col. 16, lns 15-19). Yet, the disclosure of a state machine for detecting errors and a monitor for sending data in a call record fails to teach or suggest interconnection analysis server that comprises memory storing computer executable code for receiving performance data for interconnection services provided on a communication network. Moreover, neither *Stewart* or *D'Eletto* are relied upon or cited as curing this deficiency. Thus, the cited references fail to disclose all elements of claim 42.

Furthermore, Applicants would like to point out that the mere assertion by the Examiner in rejecting claim 42 without pointing out the particular portions of the cited references that disclose the above feature of claim 42 fails to establish a prima facie case of obviousness. Moreover, the Examiner is reminded that in order to properly reject a claim under 35 U.S.C. § 103, the Examiner should set forth in the Office Action the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or

page numbers and line numbers where appropriate. (MPEP , 706.02(j)). In addition, Applicant respectfully asserts that the applied art reference or references must teach or suggest all the claim limitations when applying 35 U.S.C. § 103. (M.P.E.P. § 2141). However, the Examiner has failed to adequately reject claim 42 as the Examiner has clearly failed to point out which portions of the cited references teach the elements of claim 42 listed above.

In addition, if the Examiner is relying on some type of inherency in rejecting claim 42, Applicants respectfully assert that in order to properly establish a rejection based on inherency, “the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art,” M.P.E.P. § 2112, citing *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis original). However, the Examiner’s statement that the cited references disclose claim 42 because call detail record analysis would be performed by an interconnection analysis server does not reasonably support a conclusion that an interconnection server comprising memory storing computer executable code that is executable to receive performance data for interconnection services clearly flows from the applied art of *Brockman* in view of either *Stewart* or *D’Eletto*. Thus, the Examiner fails to establish a prima facie case of obviousness with respect to claim 42, as the Examiner has failed to establish that the prior art references teach or suggest all the claim limitations under 35 U.S.C. § 103. (M.P.E.P. § 2141). Therefore, Applicants respectfully request that the rejection of claim 42 under 35 U.S.C. § 103 be withdrawn.

Claim 57

Claim 57 requires, in part:

at least one processor-based monitor for capturing signaling data from said signaling network, wherein said signaling data includes performance data for interconnection services provided on said communication network.

The cited references fail to disclose at least this features of claim 57. In rejecting claim 57, the Examiner states that *Brockman* discloses this feature of claim 57 by merely paraphrasing the claim language. (Office Action, pages 3-4). In making this rejection, the Examiner makes reference to column 16, however, the Examiner fails to specifically address

which features of *Brockman* are relied upon as disclosing this feature of claim 57. Thus, Applicants assume that the Examiner relied on the portions discussed below.

Brockman discloses state machines that detect errors whereby data that is kept is used for performance monitoring, a call tracing mechanism, and for Call Detail Record (CDR) generation. (*Brockman*, col. 16, lns 4-11). *Brockman* further discloses that the performance monitoring application will track all of the ISUP calls in order to check for errors in the network whereby the state machines will accumulate this data. (*Brockman*, col. 16, lns 6-9). The state machine will detect errors in its call record and then signal another monitor to send corresponding data in a secondary call record. (*Brockman*, col. 16, lns 18-22). If an error condition is detected, all data for a particular call is saved for later analysis. (*Brockman*, col. 16, lns 15-19). However, the disclosure of a performance monitoring application that monitors ISUP calls to check for errors and saves all data for a particular call if an error is detected fails to teach or suggest at least one processor-based monitor for capturing signaling data from the signaling network, wherein the signaling data includes performance data for interconnection services as required by claim 57. Moreover, the Examiner does not rely on *Stewart* nor *D'Eletto* as disclosing this feature of claim 57. Thus, the cited references fail to disclose all elements of claim 57, and therefore, Applicants respectfully request that the rejection of claim 57 under 35 U.S.C. § 103(a) be withdrawn.

Furthermore, Applicants would like to point out that the mere assertion by the Examiner that *Brockman* discloses all features of claim 57 without pointing out the particular portions of the cited references that disclose the above feature of claim 57 fails to establish a prima facie case of obviousness. Moreover, the Examiner is reminded that in order to properly reject a claim under 35 U.S.C. § 103, the Examiner should set forth in the Office Action the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page numbers and line numbers where appropriate. (MPEP, 706.02(j)). In addition, Applicant respectfully asserts that the applied art reference or references must teach or suggest all the claim limitations when applying 35 U.S.C. § 103. (M.P.E.P. § 2141). However, the Examiner has failed to adequately reject claim 57 as the Examiner has clearly failed to point out which portions of the cited references teach all the elements of claim 57.

2. Dependent Claims

Claims 2-24, 26-41, 43-56, 58-69, and 71-83 depend directly or indirectly from their respective base claims 1, 25, 42, 57, and 70 and thereby inherit all of the limitations of their respective base claims. Accordingly, it is respectfully submitted that the dependent claims are allowable based on at least their dependency from independent base claims 1, 25, 42, 57, and 70 for at least the reasons discussed above.

Furthermore, in rejecting dependent claims 2-24, 26-41, 43-56, 58-69, and 71-83, the Examiner merely asserts, “*see the explanation as set forth above in addition to the fact that the combination teaches and renders obvious the claimed subject matter.*” (Office action, pages 3-4). Yet, such a statement by the Examiner fails to establish a prima facie case of obviousness with respect to the dependent claims. Thus, as stated above, in order for an Examiner to properly reject a claim, both dependent and independent, under 35 U.S.C. § 103, the Examiner should set forth in the Office Action the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page numbers and line numbers where appropriate. (MPEP, 706.02(j)). In addition, Applicant respectfully asserts that the applied art reference or references must teach or suggest all the claim limitations when applying 35 U.S.C. § 103. (M.P.E.P. § 2141). However, the Examiner has failed to set forth the relevant teachings of the cited references in rejecting dependent claims 2-24, 26-41, 43-56, 58-69, and 71-83. Thus, Applicants respectfully assert that the Examiner has failed to establish a prima facie case of obviousness with respect to dependent claims 2-24, 26-41, 43-56, 58-69, and 71-83, and therefore, Applicant respectfully request that the rejection of claims 2-24, 26-41, 43-56, 58-69, and 71-83 under 35 U.S.C. §103 be withdrawn.

IV. Summary

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

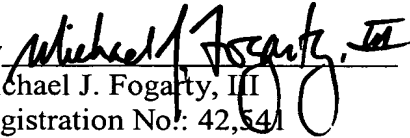
Application No.: 09/740,047

Docket No.: 50860/P019US/10020181

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 50860/P019US/10020181 from which the undersigned is authorized to draw.

Dated: August 13, 2004

Respectfully submitted,

By 
Michael J. Fogarty, III
Registration No.: 42,541

FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-8000
(214) 855-8200 (Fax)
Attorney for Applicant(s)